



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 19627661

Date: FEB. 16, 2022

Appeal of Jacksonville, Florida Field Office Decision

Form N-600, Application for a Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that she derived citizenship from her naturalized U.S. citizen father under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The Director of the Jacksonville, Florida Field Office denied the Form N-600 concluding that the Applicant did not establish, as required that she was residing in the United States in her father's legal and physical custody.

On appeal, the Applicant submits an affidavit from her father and additional evidence of her residence in the United States.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

The record reflects that the Applicant was born in Cuba in 2008 to married noncitizen parents. Her parents divorced there in  2015, and six months later in December 2015 the Applicant was paroled into the United States with her mother and older sibling. The Applicant subsequently adjusted her status to that of a lawful permanent resident, retroactive to the date of her December 2015 parole. The Applicant's father naturalized as a U.S. citizen in August 2020, when the Applicant was 11 years old. There is no evidence that her mother is a U.S. citizen.

To determine whether the Applicant derived U.S. citizenship from her father we apply "the law in effect at [the] time the critical events giving rise to eligibility occurred." *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). Because the Applicant is currently under the age of 18 years, we consider her derivative citizenship claim under section 320 of the Act, as in effect since 2001.

Section 320 of the Act provides, in pertinent part, that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
- (2) The child is under the age of eighteen years.
- (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

The term “legal custody” means “responsibility for and authority over a child.” 8 C.F.R. § 320.1. If the child’s parents are divorced, U.S. Citizenship and Immigration Services (USCIS) will find a U.S. citizen parent to have legal custody of a child where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence. 8 C.F.R. § 320.1(2). USCIS will also consider a U.S. citizen parent who has been awarded “joint custody,” to have legal custody of a child. *Id.* There may be other factual circumstances under which USCIS may find the U.S. citizen parent to have legal custody for purposes of section 320 of the Act. *Id.*

Because the Applicant was born abroad, she is presumed to be a noncitizen and bears the burden of establishing her claim to U.S. citizenship by a preponderance of credible evidence. *Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008).

## II. ANALYSIS

The Applicant has satisfied several of the above conditions—she is currently under the age of 18 years, has a U.S. citizen father, and is a lawful permanent resident. The issue on appeal is whether the Applicant has established that she was residing in the United States in the legal and physical custody of her father when her father naturalized in August 2020 or thereafter.

The Applicant represented on her Form N-600 that her parents were divorced and that she and her father were residing at the same address in Florida. In support, she submitted a copy of the divorce certification issued by a civil registry office in Cuba, evidence that she was a recipient of state food assistance benefits program from April through September 2020, and her school records reflecting the same residential address she listed on her Form N-600. Because the divorce certification did not include any custody provisions, the Director issued a request for evidence asking the Applicant to submit documents showing that a court of law or other appropriate government entity awarded primary care, control, and maintenance of the Applicant to her father.

In response, the Applicant submitted evidence that her father had been paying court-ordered child support to her mother, as well as additional school records listing her mother as a primary contact and her father as a secondary contact. The Director determined that this evidence was insufficient to establish that the Applicant’s father had the requisite physical and legal custody, as it indicated that the Applicant lived with her mother and under her mother’s care.

The Applicant does not identify any errors in the Director's determination concerning legal custody; instead, she submits an affidavit from her father, copies of her and her father's state identification documents, and additional evidence from the state food benefits assistance program.

We have reviewed the entire record, as supplemented on appeal and conclude that it is still insufficient to establish that the Applicant is residing in the United States in her father's legal custody.

The father states in his affidavit that he shares legal and physical custody of the Applicant with her mother, but he does not provide any details of their custody arrangement. Nor does the Applicant submit any statements from her mother to corroborate her father's claim that the parents jointly exercise control over the Applicant and share responsibility for her care and maintenance. Moreover, the preponderance of the evidence in the record indicates that the Applicant has been under her mother's primary care since she was first paroled into the United States in December 2015. Specifically, the record reflects that the Applicant arrived in the United States with her sibling and her mother, who was divorced from her father at the time. Furthermore, the food assistance program documents indicate that the Applicant was determined to be eligible for and has been receiving state benefits as her mother's dependent child. Lastly, the Florida court documents show that the Applicant's father has been paying monthly child support to her mother since at least November 2020. The court documents further indicate that the Applicant's father was a respondent (identified as a non-custodial parent) in the child support proceedings, while the Applicant's mother was the petitioner (identified as a custodial parent). We acknowledge that the same address is listed on the Applicant's and her father's state identification documents; however, it is not clear where the Applicant's father actually resides, as USCIS records show that he claimed two separate physical addresses in naturalization proceedings. The Applicant does not provide documents, such as her father's tax, employment, residential, or other records to establish which of the two addresses corresponds to his actual place of residence, nor does she explain whether her parents continue to live together despite their divorce.

To summarize, the Applicant has not provided any documents to indicate that her father was awarded legal custody by a court of law or other appropriate government entity either in Cuba or in the United States. Absent such evidence, we cannot conclude that the Applicant's father meets the legal custody criteria under the regulations at 8 C.F.R. § 320.1(2). Furthermore, while we acknowledge the father's statement that he shares legal custody of the Applicant with her mother, that statement is uncorroborated and the preponderance of the evidence in the record indicates that the Applicant has been residing with her mother and currently remains under her mother's primary care: she initially entered the United States with her mother, she is receiving state benefits as her mother's dependent child, and her father was ordered to pay child support to her mother. As the Applicant has not explained whether her parents currently live together and she has not provided any statements from her mother concerning the parents' custody arrangement, she has not demonstrated any other factual circumstances that might support a finding that her father has legal custody for derivative citizenship purposes.

Based on the above, we conclude that the Applicant has not met her burden of proof to establish that she is residing in the United States in her father's legal custody, as required under section 320(a)(3) of the Act. Because she is ineligible for a Certificate of Citizenship on that basis alone, we need not

address at this time whether the Applicant satisfies the physical custody condition for derivative citizenship under the same section.<sup>1</sup> The Applicant's Form N-600 remains denied.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> Instead, we reserve the issue. Our reservation of the issue does not mean that the Applicant meets this requirement and should not be interpreted as such. Rather, as she has not shown that her father has the requisite legal custody for derivative citizenship purposes, there is no constructive purpose in evaluating whether the evidence is sufficient to establish that he has physical custody because it would not change the outcome.